

### **REMARKS**

The Applicant wishes to thank the Examiner for his examination of the present application. Claim 37 has been cancelled, claims 1, 14-16, 29-34, 38-41, 66-70, 76, 79-90 have been amended, and new claims 91-96 have been added. No new matter has been added.

#### **Claim Objections**

Claims 29-33, 37-41, 66-69 stand objected to under 37 CFR 1.75(c) as being in improper format because a multiple dependent claim should refer to the claims in the alternative only. Claims 29-33, 38-41 and 66-69 have been amended to refer to the claims in the alternative. Claim 37 has been cancelled, as it has been incorporated into claim 34.

#### **35 U.S.C. §102**

Claims 1-28, 34-36, 42-65, and 70-90 stand rejected under 35 U.S.C. 102(b) as being unpatentable over U.S. patent no. 6,126,690 (Ateshian et al., hereinafter Ateshian). Amended claim 1 is directed at an articular implant in which a portion or at least a portion of one of the first or second surfaces has a three-dimensional shape that substantially matches the shape of one of the first and second articular surfaces so as to have a plurality of convexities and a plurality of concavities, *such that that movement of the implant in the joint is limited without an attachment mechanism.*

In contrast, Ateshian discloses a joint prosthesis that includes a first and/or second anchor that includes a stem for attachment to the bone. The stem may include, for example, flutes to facilitate cement fixation (see Ateshian at col. 8, lines 60-67). This is very different from amended claim 1, in which movement of the implant is limited without an attachment mechanism. As described in the subject application at paragraph 119, the shape of the implant closely matched to the underlying articular surface helps to achieve stabilization over an articular surface.

Since Ateshian fails to disclose or suggest that movement of the implant in the joint is limited without an attachment mechanism, as required by amended claim 1, claim 1 as amended is patentable over Ateshian. Claims 2-28 and 42-65 which depend from

amended claim 1, are likewise patentable over Ateshian and are further allowable in view of the additional limitations set forth therein.

Amended independent claim 34 is directed at an implant having a first surface and a second surface wherein the first surface opposes a first articular surface of a joint and the second surface opposes a second articular surface of the joint. A portion or at least a portion of one of the first or second surfaces has a three-dimensional shape that substantially matches the shape of one of the first and second articular surfaces, the one of the first and second articular surfaces being one of a substantially uncut articular cartilage surface and a substantially uncut subchondral bone surface. The implant includes a plurality of components. A first component of the plurality of components engages a second component of the plurality of components in at least one of slideably and rotatably.

Ateshian discloses in Fig. 1 an implant having a first anchor and second anchors that include stems that are inserted into a canal in the metacarpal bone and show substantial cutting of the cartilage/bone surface (see also Ateshian at col. 8, lines 60-67). This is different from claim 1, which requires that the one of the first and second articular surfaces is one of a substantially uncut articular cartilage surface and a substantially uncut subchondral bone surface. Alternatively, Ateshian discloses in Figs. 2 and 3 an implant that includes a first anchor having a stem and a head. However, nowhere does Ateshian disclose that the stem and head are slideably and/or rotatably engaged, as are the first and second components of claim 34. Since Ateshian fails to disclose required limitations of amended claim 34, amended claim 34, and claims 35-41, which depend from claim 34, are patentable over Ateshian.

Amended claim 66-69 depend on amended claim 1, or alternatively, amended claim 34, and thus are allowable for the same reasons as claim 1 or claim 34, respectively, and are further allowable in view of the additional limitations set forth therein.

Amended claim 70 and dependent claims 71-75 require that movement of the implant in the joint is limited without an attachment mechanism, and thus are allowable

for the same reasons as claim 1, and are further allowable in view of the additional limitations set forth therein.

Amended claim 76 and dependent claims 77 and 78 require that movement of the implant in the joint is limited without an attachment mechanism, and thus are allowable for the same reasons as claim 1, and are further allowable in view of the additional limitations set forth therein.

Independent claims 79-90 each require that movement of the implant in the joint is limited without an attachment mechanism, and thus are allowable for the same reasons as claim 1, and are further allowable in view of the additional limitations set forth therein.

It is submitted that all pending claims are in condition for allowance.  
Reconsideration of the claims and a notice of allowance are therefore requested.

Applicants believe that no extension of time is required; however, this conditional petition is being made to provide for the possibility that the applicant has inadvertently overlooked the need for an extension of time. If any additional fees are required for the timely consideration of this application, please charge deposit account number 19-4972.

The Examiner is requested to telephone the undersigned if any matters remain outstanding so that they may be resolved expeditiously.

Respectfully submitted,



Alexander J. Smolenski, Jr.  
Registration No. 47,953  
Attorney for Applicant

Bromberg & Sunstein LLP  
125 Summer Street  
Boston, MA 02110-1618  
(617) 443-9292  
02960/00112 556600.1